

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PAUMA BAND OF LUISENO
MISSION INDIANS OF THE
PAUMA & YUIMA RESERVATION,
a/k/a PAUMA LUISENO BAND OF
MISSION INDIANS, a/k/a PAUMA
BAND OF MISSION INDIANS, a
federally recognized Indian Tribe,

CASE NO. 09cv1955 CAB (MDD)
ORDER ON JOINT MOTION
FOR CLARIFICATION OF THE
SCOPE OF DISCOVERY
[DOC. NO. 186]

Plaintiff,

vs.

STATE OF CALIFORNIA;
CALIFORNIA GAMBLING
CONTROL COMMISSION, an
agency of the State of California; and
ARNOLD SCHWARZENEGGER, as
Governor of the State of California;

Defendants.

Before the Court is the joint motion of the parties for clarification of the scope of discovery authorized by the Honorable Cathy A. Bencivengo, United States District Judge, on May 18, 2012. (*See* Doc. No. 182). During the hearing on May 18, 2012, Judge Bencivengo authorized the parties to engage in limited discovery for a period of sixty (60) days. (*Id.* at 40). The nature of discovery was limited to written discovery and no more than three (3) depositions. (*Id.* at 45). The scope of authorized discovery

1 also was limited. It is the scope of that limitation that is before this Court.

2 The Court has reviewed the motion papers and the transcript of the hearing
3 before Judge Bencivengo. A critical issue to be addressed by the District Court is
4 when the statue of limitations began to run in connection with some or all of the
5 claims asserted by Plaintiff. (*Id.* at 28). Resolving that issue, in turn, depends in
6 large part on the nature of the relationship between Plaintiff and Defendant created
7 by the 1999 Compact. If, as Plaintiff claims, the 1999 Compact created a relationship
8 whereby Defendants owed a fiduciary duty to Plaintiff, the statute of limitations for
9 certain claims would not commence until Plaintiff had actual notice of facts sufficient
10 to trigger the associated causes of action. If, as Defendants claim, there either was no
11 fiduciary relationship created or it was a very limited fiduciary responsibility, then
12 the statue of limitations for certain claims may have commenced when Plaintiff
13 should have known sufficient facts to trigger the associated causes of action. (*Id.*).

14 The Court cannot view Judge Bencivengo's Order in a vacuum. Any discovery
15 order must be viewed in relation to the claims and defenses of the parties. Here, the
16 dispute centers on Defendants' alleged mishandling of its responsibilities in
17 determining the availability and distribution of gaming licenses under the 1999
18 Compact. The Court interprets Judge Bencivengo's Order as allowing limited
19 discovery into when Plaintiff's causes of action under the 1999 Compact accrued for
20 statute of limitations purposes. That issue, of necessity, as discussed above, requires
21 discovery into whether or not the 1999 Compact created a fiduciary relationship
22 between the parties and the scope of that relationship. The Court does not interpret
23 Judge Bencivengo's Order as authorizing discovery into whether or not a fiduciary
24 duty was breached and, if so, damages attendant to that breach.

25 The scope of authorized discovery at this time is as follows:

26 1. Discovery may be obtained, during this period, to facts relating to
27 whether or not the provisions of the 1999 Compact created a fiduciary
28

relationship between the parties relating to the availability and distribution of licenses and, if so, the scope of that fiduciary relationship; and,

2. Discovery may be had, during this period, into facts learned by Plaintiff that bear on when Plaintiff actually knew or should have known of facts relating to the improper calculation and distribution of licenses under the 1999 Compact.

IT IS SO ORDERED:

DATED: June 12, 2012

Mitchell D. Dembin
Hon. Mitchell D. Dembin
U.S. Magistrate Judge